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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034-2171-01]

RIN 0648-XC077

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Adjustment of Georges Bank Yellowtail Flounder Annual Catch Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment of annual catch limits.

SUMMARY: NMFS announces adjustments to the 2012 fishing year (FY) Georges Bank (GB) yellowtail flounder annual catch limits (ACLs) for the Atlantic scallop and Northeast (NE) multispecies fisheries. This action is based on new projections of the expected catch of GB yellowtail flounder by the scallop fishery and is consistent with a request for the ACL adjustments from the New England Fishery Management Council (Council). The intent is to provide additional harvest opportunity to the NE multispecies fishery while ensuring sufficient amounts of GB yellowtail flounder are available for the scallop fishery.

DATES: Effective [Insert date of filing for public inspection at the Office of the Federal Register], through April 30, 2013.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fisheries Management Specialist, (978) 675-2153, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

## Background

The GB yellowtail catch limit for U.S. fisheries, commonly called quotas, are set through an agreement process with Canada as part of the U.S./Canada Resource Sharing Understanding (Understanding). Scientists from both countries conduct a joint assessment of the transboundary stock and provide advice on catch level recommendations to a joint U.S. and Canadian committee called the Transboundary Management Guidance Committee (TMGC). The TMGC establishes an overall quota, called the Total Shared Total Allowable Catch (TAC), which is then subdivided to the two countries using an agreed-upon allocation formula. For FY 2012, the U.S. portion of this quota is 564 mt.

The Council makes recommendations to NMFS on further partitioning the U.S. GB yellowtail quota between the NE multispecies, scallop, and other fisheries. The allocation to the scallop fishery, known as the sub-ACL, is specified in regulations to be set at an amount equal to 90 percent of the projected need by that fishery, to maximize scallop catch. The groundfish sub-ACL is determined after deducting the sub-ACL allocated to the scallop fishery and the sub-ACLs allocated to the state-waters fisheries and non-groundfish fisheries. Framework Adjustment (FW) 44 to the NE Multispecies Fishery Management Plan (FMP), implemented May 1, 2010 (75 FR 18356), established the current sub-ACL allocation to the scallop fishery at 307.5 mt. FW 47 to the FMP, implemented May 2, 2012 (77 FR 26104), established the 2012 FY GB yellowtail flounder sub-ACL for the groundfish fishery at 217.7 mt.

Scallop fishing vessels, which catch GB yellowtail flounder while fishing for scallops, are required to retain all legal-sized yellowtail flounder they catch. All yellowtail flounder caught by scallop vessels, including those discarded at sea, are counted against the scallop fishery's sub-ACL. The majority of groundfish vessels catch GB yellowtail flounder in trawl

nets, either as incidental catch while targeting other groundfish stocks, or while targeting GB yellowtail flounder.

Almost all of the GB yellowtail flounder caught by NE multispecies fishing vessels are caught by vessels participating in the sector program. Sectors receive an Annual Catch Entitlement (ACE) for each regulated groundfish species allocated, including GB yellowtail flounder in the GB broad stock area. The amount of ACE varies by sector. When a sector has caught its entire available ACE for a given stock, vessels in that sector can no longer fish within the applicable stock area for that fish stock. The amount of the sub-ACL allocated to groundfish vessels, therefore, can be constraining on sector vessels that are fishing for other groundfish species, or that are targeting GB yellowtail flounder.

During the April 25, 2012, Council meeting in Mystic, CT, members of the NE multispecies fishing industry expressed concern to the Council that the 2012 NE multispecies GB yellowtail flounder sub-ACL of 217.7 mt is too low. Given this concern and indications that the scallop fishery sub-ACL for GB yellowtail flounder may be higher than needed by the scallop fishery in light of more current catch information, the Council requested that NMFS create a GB yellowtail flounder working group to explore the possibilities of increasing the amount of GB yellowtail sub-ACL allocated to the groundfish fishery. The request suggested that the working group include members from the TMGC, Council Groundfish and Scallop Committees, and NMFS and Council staff. The Council requested that the working group review the possibility of revising the sub-ACLs for the scallop and groundfish fisheries based on new information suggesting that the projections of GB yellowtail flounder catch in the scallop fishery were much higher than needed, and to consider modification of the U.S. and Canadian shares of GB yellowtail flounder established through the Understanding.

In response to this request, NMFS formed a working group, which also included fishing industry and nongovernmental organization representatives. The working group held teleconferences on May 11, 2012, and May 18, 2012, a 1-day workshop in New Bedford, MA, on May 23, 2012, and teleconferences on May 31, 2012, and June 15, 2012. During these five meetings, the working group discussed a range of short-term and long-term measures for GB yellowtail flounder management, in addition to the Council requests made at its April 2012 meeting. The working group recognized that the most effective short-term tool to address the Council's request was to utilize existing regulatory authority to revise sub-ACLs allocated to the scallop and groundfish fisheries for GB yellowtail flounder. To determine the feasibility and magnitude of potential revisions of the scallop and groundfish sub-ACLs, the working group asked for updated projections NMFS's Northeast Fisheries Science Center (NEFSC) of expected catch of GB yellowtail flounder in FY 2012 by the scallop fishery. As a complementary action to such revisions, the working group also discussed the possibility of eliminating or adjusting accountability measures (AMs) for the scallop fishery, should the sub-ACL for the scallop fishery be reduced substantially.

In addition to the working group meetings, a joint Groundfish Committee and Scallop Committee (Joint Committee) was convened on June 18, 2012 in Portland, ME, to discuss the Council's original requests and review the discussions from the working group. On that same date, the NEFSC provided revised projections of possible of GB yellowtail flounder catch by the scallop fishery ranging from 47.6 mt to 174.3 mt, with a median projection of 105.2 mt. Using these new projections, the Joint Committee recommended to the Council that they request that NMFS use its current regulatory authority to reduce the scallop GB yellowtail flounder sub-ACL to 90 percent of 174.3 mt (156.9 mt), and increase the groundfish GB yellowtail flounder sub-

ACL by the amount of this reduction (150.6 mt) to 368.3 mt. In addition, the Joint Committee requested emergency action to temporarily relieve the scallop fishery from any AM triggered by catch less than 307.5 mt that would otherwise be required, based on the reduced sub-ACL. In making this recommendation, the Joint Committee emphasized that, if the overall ACL for GB yellowtail flounder were exceeded, there would still be an AM in place, calling for a pound-for-pound reduction in the amount of the overage in the FY 2013 U.S./Canada TAC. At its June 21, 2012, meeting, the Council adopted the Joint Committee recommendations, requesting that NMFS revise the scallop and groundfish sub-ACLs for GB yellowtail flounder and requested an emergency action to temporarily relieve the scallop fishery from any AM that would have been triggered by catch of GB yellowtail flounder less than 307.5 mt.

#### Adjustment of Georges Bank Yellowtail Flounder Sub-Annual Catch Limits

The regulatory authority for revising the scallop and groundfish sub-ACLs for GB yellowtail is in 50 CFR part 648, subpart F. Because of uncertainty in the initial estimates of yellowtail flounder catch in the scallop fishery, FW 47 to the FMP implemented a mechanism (at § 648.90(a)(4)(iii)(C)) requiring NMFS to re-estimate the expected GB yellowtail flounder catch by the scallop fishery by January 15 of each fishing year. If the re-estimate of projected GB yellowtail flounder indicates that the scallop fishery will catch less than 90 percent of its sub-ACL, NMFS may reduce the scallop fishery sub-ACL to the amount expected to be caught, and increase the NE multispecies fishery sub-ACL for GB yellowtail flounder up to the difference between the original estimate and the revised estimate.

Based on the new projections of GB yellowtail flounder catch by the scallop fishery, and this authority, effective [Insert date of filing for public inspection at the Office of the Federal Register], through April 30, 2013 (unless further revised through an additional inseason action), NMFS is reducing the scallop fishery sub-ACL of GB yellowtail flounder by 150.6 mt (307.5 mt

- 156.9 mt) and increasing the NE multispecies sub-ACL of GB yellowtail flounder by 150.6 mt to 368.3 mt (See Table 1). Revising the sub-ACL for the scallop fishery at the high end of the projected GB yellowtail flounder catch is intended to avoid an underestimation of such catch at a relatively early point in the scallop FY, while allowing a meaningful increase in the groundfish sub-ACL for this stock as soon as possible. This revised allocation of 368.3 mt GB yellowtail flounder to the NE multispecies fishery is allocated between the sector sub-ACL and the common pool sub-ACL in the same proportion as the original sub-ACL (See Tables 2 and 3). NMFS will continue to monitor both fisheries and, if necessary, make additional adjustments prior to January 15, 2013.

Table 1. Georges Bank Yellowtail Flounder Sub-ACLs (in metric tons)

	Groundfish	Scallop	Other; Not fishery specific	Total
Current Sub-ACL	217.7	307.5	22.6	547.8
Adjustment Amount	+150.6	-150.6	none	N/A
Revised Sub-ACL	368.3	156.9	22.6	547.8

Table 2. Sector and Common Pool Sub-ACLs (in metric tons)

	Sector	Common Pool	Total
Current Sub-ACL	215.2	2.5	217.7
Adjustment Amount	+148.9	+1.7	N/A
Revised Sub-ACL	364.1	4.2	368.3

Table 3. Allocations for Sectors and the Common Pool (in metric tons)

Sector Name	Original	Revised
Fixed Gear Sector	0.0	0.0
Maine Permit Bank	0.0	0.1
New Hampshire Permit Bank	0.0	0.0
Northeast Coast Communities Sector	1.8	3.1
Northeast Fishery Sector II	4.2	7.0
Northeast Fishery Sector III	0.0	0.0
Northeast Fishery Sector IV	4.7	8.0
Northeast Fishery Sector V	13.5	22.8
Northeast Fishery Sector VI	5.9	9.9
Northeast Fishery Sector VII	20.3	34.4
Northeast Fishery Sector VIII	23.8	40.3
Northeast Fishery Sector IX	60.8	102.8

Northeast Fishery Sector X	0.0	0.1
Northeast Fishery Sector XI	0.0	0.0
Northeast Fishery Sector XII	0.0	0.0
Northeast Fishery Sector XIII	36.2	61.3
Port Clyde Community Groundfish Sector	0.0	0.0
Sustainable Harvest Sector 1	27.2	46.0
Sustainable Harvest Sector 3	1.0	1.6
Tri-State Sector	15.8	26.7
All Sectors Combined	215.2	364.1
Common Pool	2.5	4.2

Note: All ACE values for sectors outlined in Table 3 assume that each sector permit is valid for FY 2012.

### Council Request to Exempt Scallop Fishery from Accountability Measures

In addition to the request to adjust the GB yellowtail flounder sub-ACLs for the scallop and NE multispecies fisheries, the Council requested that NMFS use emergency authority granted to the Secretary of Commerce by section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act to partially exempt the scallop fishery from AMs based on the reduced scallop fishery sub-ACL. This request would exempt the scallop fishery from required AMs for any catch above the revised sub-ACL, but below the initially allocated sub-ACL of 307.5 mt. Under the Council's request, the scallop fishery would be subject to AMs for any catch above 307.5 mt, while the existing pound-for-pound payback at the overall fishery-level ACL, as specified in the Understanding, would remain in place. NMFS is announcing, through this notice, its intent to propose a separate rulemaking to exempt the scallop fishery from AMs for GB yellowtail flounder for catch below 307.5 mt, consistent with the Council's request. A separate rulemaking for the emergency measure is necessary because of the need to revise, as soon as possible, the sub-ACLs to increase the GB yellowtail flounder available to the groundfish fishery. Because the revisions being implemented through this action can be taken as an inseason adjustment, and are contemplated and required under current regulations, it can be done more quickly than the emergency action request. As soon as possible, NMFS will publish a

proposed rule to revise the scallop fishery AM, as requested by the Council; the proposed rule will include an opportunity for public comment.

#### Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Deputy Administrator for Regulatory Programs, performing the functions of the Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive prior notice and the opportunity for public comment for this in season sub-ACL adjustment because notice and comment would be impracticable and contrary to the public interest. The regulations at § 648.90(a)(4)(iii)(C) grant the NMFS Northeast Regional Administrator authority to reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL up to the amount reduced from the scallop fishery in order to maximize the GB yellowtail flounder yield. The updated projections of GB yellowtail flounder catch in the scallop fishery only recently became available on June 18, 2012. Given this fact, the time necessary to provide for prior notice and comment would prevent NMFS from implementing the necessary sub-ACL adjustments in a timely manner. A resulting delay in the sub-ACL adjustments could prevent in the short-term NE multispecies vessels from harvesting GB yellowtail flounder catch at higher rates and potentially prevent the full harvest of the sub-ACLs of other groundfish stocks that are caught coincidentally with GB yellowtail flounder. Given the significant decreases in catch limits for many groundfish stocks in FY 2012, even short-term reductions in such limits when no longer needed could have devastating and unnecessary negative economic consequences on fishermen. Giving effect to this rule as soon as possible will prevent these unnecessary impacts.



The Deputy Administrator for Regulatory Programs, performing the functions of the Assistant Administrator for Fisheries, NOAA, also finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action for these same reasons. Further, there is no need to allow the industry additional time to adjust to this rule because it does not require immediate action on the part of individual scallop or groundfish fishermen.

Authority: 16 U.S.C. 1801 et seq.

Dated: July 11, 2012

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Lindsay Fullenkamp,

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Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012-17245 Filed 07/13/2012 at 8:45 am; Publication Date: 07/16/2012]